

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK SMSA LIMITED PARTNERSHIP d/b/a  
VERIZON WIRELESS, NEW CINGULAR WIRELESS  
PCS, LLC, SPRINT SPECTRUM L.P., and OMNIPOINT  
COMMUNICATIONS, INC., a wholly owned subsidiary  
of T-MOBILE USA, INC.,

Case No. 07 CV 7637  
(Brieant, J.)  
(Yanthis, M.J.)

Plaintiffs,

-against-

**STATEMENT PURSUANT  
TO LOCAL CIV. R. 56.1**

THE TOWN OF CLARKSTOWN and THE TOWN  
BOARD OF THE TOWN OF CLARKSTOWN,

Defendants.  
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Pursuant to Local Civ. R. 56.1, defendants The Town Clarkstown and the Town Board of the Town of Clarkstown respectfully submit this statement of material facts as to which the defendants contend there is no genuine issue to be tried:

1. On July 24, 2007, the Town of Clarkstown amended its local law respecting the siting of wireless telecommunications facilities, as codified in the Wireless Telecommunications Facilities Law, Chapter 251 of the Town Code of the Town of Clarkstown (the "Wireless Law"). A copy of the Wireless Law, as amended, is contained as Exhibit A to the Declaration of Town Attorney Amy Mele.

2. Prior to its enactment, the Town commissioned a lengthy and extensive study and report concerning wireless siting issues, the outcome of which led to a detailed and comprehensive report and recommendations set forth in a Wireless Siting Plan, prepared by the engineering firm of HDR/LMS and Senior Project Engineer, Michael P. Musso, P.E. A copy of the Wireless Siting Plan is contained in Exhibit B to the Mele Declaration, and many of its recommendations are incorporated into the 2007 Amendments to the Wireless Law.

3. Also prior to the enactment of the 2007 Amendments to the Wireless Law, the Town held numerous public hearings and work sessions, including with neighboring municipalities, and with attorneys and representatives of several wireless carriers. See Mele Decl., ¶¶29-30 and accompanying exhibits.

4. Several changes or clarifications to the proposed 2007 Amendments were specifically made at the request of the carriers in response to the carriers' stated objections and concerns. These changes and clarifications are incorporated into the Wireless Law itself. See Mele Decl., ¶¶31-36 and accompanying exhibits.

5. In addition, on January 11, 2007, the Clarkstown Planning Board recommended to the Town Board that the proposed amendments to the Wireless Law be enacted into law, with specified recommended revisions. A copy of the Planning Board's recommendations is contained in Exhibit C to the Mele Declaration.

6. As of the date of the plaintiffs' commencement of this action, and continuing to the date hereof, not a single application has been filed under the 2007 Amendments to the Wireless Law. Mele Decl., ¶38; Simoes Decl., ¶25.

Dated: Garden City, New York  
March 14, 2008

Respectfully Submitted,

ROSENBERG CALICA & BIRNEY LLP

By: \_\_\_\_\_/s/\_\_\_\_\_  
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